

PATENT COOPERATION TREATY

From the
INTERNATIONAL SEARCHING AUTHORITY

To:

see form PCT/ISA/220

PCT

WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY (PCT Rule 43bis.1)

Date of mailing
(day/month/year) see form PCT/ISA/210 (second sheet)

Applicant's or agent's file reference
see form PCT/ISA/220

FOR FURTHER ACTION
See paragraph 2 below

International application No.
PCT/EP2004/052559

International filing date (day/month/year)
15.10.2004

Priority date (day/month/year)
17.10.2003

International Patent Classification (IPC) or both national classification and IPC
F16G1/28, B29D29/08, B29C67/24, C08L15/00, C08L27/18

Applicant
DAYCO EUROPE S.R.L. CON UNICO SOCIO

1. This opinion contains indications relating to the following items:

- ☒ Box No. I Basis of the opinion
- ☐ Box No. II Priority
- ☐ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☐ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☒ Box No. VI Certain documents cited
- ☒ Box No. VII Certain defects in the international application
- ☒ Box No. VIII Certain observations on the international application

2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will usually be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA"). However, this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of three months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

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**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.
PCT/EP2004/052559

Box No. I Basis of the opinion

1. With regard to the **language**, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.
 - ☐ This opinion has been established on the basis of a translation from the original language into the following language , which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).
2. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:
 - a. type of material:
 - ☐ a sequence listing
 - ☐ table(s) related to the sequence listing
 - b. format of material:
 - ☐ in written format
 - ☐ in computer readable form
 - c. time of filing/furnishing:
 - ☐ contained in the international application as filed.
 - ☐ filed together with the international application in computer readable form.
 - ☐ furnished subsequently to this Authority for the purposes of search.
3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
4. Additional comments:

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.
PCT/EP2004/052559

Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

| | | |
|-------------------------------|-------------|-------|
| Novelty (N) | Yes: Claims | 4-6 |
| | No: Claims | 1-3,7 |
| Inventive step (IS) | Yes: Claims | |
| | No: Claims | 1-7 |
| Industrial applicability (IA) | Yes: Claims | |
| | No: Claims | 1-7 |

2. Citations and explanations

see separate sheet

Box No. VI Certain documents cited

1. Certain published documents (Rules 43bis.1 and 70.10)

and /or

2. Non-written disclosures (Rules 43bis.1 and 70.9)

see form 210

Box No. VII Certain defects in the international application

The following defects in the form or contents of the international application have been noted:

see separate sheet

Box No. VIII Certain observations on the international application

The following observations on the clarity of the claims, description, and drawings or on the question whether the claims are fully supported by the description, are made:

see separate sheet

Re Item V

**Reasoned statement with regard to novelty, inventive step or industrial applicability;
citations and explanations supporting such statement**

1. Reference is made to the following document/s/:

D1: EP-A-1052425

D2: EP-A-1157813

2. The following is stated under reference to Item VIII of this opinion. It is to be noted, that those features, which cause non-compliance with Article 6 PCT, can formally not be employed for unambiguously distinguishing over prior art for assessing novelty in the sense of Article 33(2) PCT or inventive step in the sense of Article 33(3) PCT.

- 2.1 Document D1, cf. figure 2, example C5 and paragraph [0053] discloses a toothed belt comprising a body (32) and a plurality of teeth (18), said teeth being coated with a fabric (24), said fabric being coated on the outside with a resistant layer, said resistant layer comprising a fluorinated plastomer (41), an elastomeric material and a vulcanizing agent, said fluorinated plastomer (41) being present in said resistant layer in an amount higher (200 phr) than that of said elastomeric material, whereby said fluorinated plastomer (41) is formed by particles of average size smaller than 10 μm (0.25 μm) and said resistant layer is made to adhere directly to said fabric (24).

Therefore the subject-matter of claim 1 for as far as can be understood lacks novelty and claim 1 does not meet the requirements of Article 33(2) PCT.

- 2.2 A process for fabrication of a toothed belt according to claim 1, whereby said resistant layer is made to adhere directly to said fabric (24) via spreading is known from D1, see for instance paragraph [0025].

Therefore the subject-matter of claim 7 is deprived of novelty and claim 7 does not meet the requirements of Article 33(2) PCT.

- 3.1 Due to the lack of novelty of independent claims 1 and 7 in the sense of Article 33(2) PCT as set out herein above under paragraph 2, it is questionable whether the requisite unity of invention in the sense of Rule 13(1) PCT in respect of the subject-matter of claims 2, 3 and 5, which formally directly depend on claim 1, still exists.

Consequently the international searching authority cannot identify in this written opinion, which of the additional features contained by dependent claims 2 - 6 or combinations thereof could in reason support the presence of an inventive step in the sense of Article 33(3) PCT.

In this respect further reference is made to the PCT-Guidelines 13.14(c), where-from it can be concluded, that a juxtaposition or an association of known features without a surprising or unexpected effect caused by an interrelationship of such features as such not lead to the conclusion of the presence of an inventive step.

- 3.2 For the aspects concerning the requirements of Article 33(2) PCT of these additional features in accordance with the present claim structure, reference is made to the citations in the International Search Report.

4. Claims 1 - 7 meet the requirements of Article 33(4) PCT.

Re Item VI

Certain documents cited

Certain published documents

| Application No Patent No | Publication date (day/month/year) | Filing date (day/month/year) | Priority date (valid claim) (day/month/year) |
|-----------------------------|--------------------------------------|---------------------------------|---|
| EP-A-1396658 | 10.03.2004 | 07.09.2002 | 07.09.2002 |

Re Item VII

Certain defects in the international application

1. Contrary to the requirements of Rule 5.1(a)(ii) PCT, the relevant background art disclosed in document D1 is not mentioned in the description, nor is this document identified therein.

Re Item VIII

Certain observations on the international application

In respect of the requirements of Article 6 PCT the following is observed.

1. The feature "a vulcanizing agent", cf. claim 1, appears to be a raw material feature rather than a resistant layer feature. This feature causes therefore formally a lack of clarity of the subject-matter of the claim, see also the PCT-Guidelines, 5.26.
- 2.1 The expression "mainly by particles of average size" as used in claim 1, lines 10 and 11 causes a lack of clarity of the subject-matter of claim 1, because the word mainly cannot be correctly interpreted in terms of quantified mass, volume or other numbers (does it for instance imply more than 50 weight percent or more than 50 vol.-% or more than 50%, 60%, 70%, etc) and because of the fact that the sequence of "mainly average size" or "50% having an average size" cannot teach any average size, cf. the PCT-Guidelines, 5.20 and 5.38. Basis for amendment can be found on page 6, last paragraph and example 3.

**WRITTEN OPINION OF THE
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AUTHORITY (SEPARATE SHEET)**

International application No. .

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- 2.2 Similar accounts for the expression "an amount higher", cf. page 11, line 9, for which a basis for amendment is contained by claim 5.